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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/381,385	02/01/2000	PHILIP C. ASHMAN	BWTIUSA	3888
7590 06/23/2005			EXAMINER	
HOWSON AND HOWSON SPRING HOUSE CORPORATE CENTER PO BOX 457 SPRING HOUSE, PA 19477			PATTERSON, MARC A	
			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 06/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/381,385

Applicant(s)

ASHMAN ET AL.

Examiner

Marc A Patterson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5,6,12,15-21 and 23-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5,6,12,15-21 and 23-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

WITHDRAWN REJECTIONS

1. The 35 U.S.C. 103(a) rejection of Claims 1, 5 – 6, 12, 15 – 21 and 23 – 40 as being unpatentable over Yamada et al (U.S. Patent No. 4,842,951) in view of Branch (U.K. Patent No. 2295617), of record on page 2 of the previous Action, is withdrawn.

NEW REJECTIONS

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 5 – 6, 12, 15 – 21 and 23 – 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kasai (U.S. Patent No. 4,927,677) in view of Branch (U.K. Patent No. 2295617).

With regard to Claims 1, 6, 15, 24 – 29, 32, 34 – 36, 38 and 40, Kasai disclose a method for storing a flavored good (food; column 1, lines 41 – 42) comprising the step of providing a laminated material (composite material; column 4, lines 22 – 27) having a core barrier layer sandwiched between an outer layer and at least one further layer (column 4, lines 22 – 27; Figure 2), the further layer being formed from a non – polar thermoplastic resin filled with an inorganic filler comprising talc (polyolefin comprising polypropylene; column 4, lines 55 – 67), therefore a platelet filler; Kasai disclose a barrier layer having a thickness of less than 25 microns (column

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1, lines 10 – 13) and storing a flavored good in a container formed from the laminate material (food; column 1, lines 41 – 42); the further layer therefore extending between the flavored good and the core barrier layer; Yamada et al therefore also disclose a laminate material having the laminate layer structure and a container formed from the laminate; Kasai do not disclose a platelet – filled barrier layer, and therefore disclose a non – platelet filled barrier layer; Kasai does not disclose components other than resin for the barrier layer (column 4, lines 22 – 27) and polyolefin and talc for the further layer (column 4, lines 32 – 37) and therefore discloses a further layer consisting of a non – polar resin and talc and a barrier layer consisting essentially of resin; the resin is vapor impermeable non – polyolefin (copolymer of vinylidene chloride and acrylic ester; column 4, lines 22 – 27); with regard to the claimed aspect of the container reducing absorption of flavoring, Kasai does not disclose absorption of flavoring, and therefore discloses reduced absorption of flavoring; because the laminate is made into a container the layer also container provides a stiffness which allows the laminate to have a relatively thin thickness. However, the claimed aspects of the talc filled layer reducing absorption and providing stiffness are directed to intended use of the layer, which are given little patentable weight. Kasai fails to disclose a talc which is a high purity talc having a CIE whiteness of at least 40, an aspect ratio of at least 5 and an average aspect ratio from 16 to 30.

Branch teaches the use of a talc having a CIE whiteness of at least 40, an aspect ratio of at least 5 and an average aspect ratio of from 16 to 30 (page 5, second paragraph; page 6, third paragraph; Abstract) for the purpose of obtaining a container which provides a good oxygen barrier (page 3, third paragraph) and a talc which is a high purity talc (purer grades of talc, therefore talc of high purity, is preferred; page 5, third paragraph) for the purpose of obtaining

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talc which has a high degree of whiteness without using a pigment (page 5, third paragraph).

Therefore, one of ordinary skill in the art would have recognized the advantage of providing for the high purity talc having a CIE whiteness of at least 40, and an aspect ratio of at least 5 and an average aspect ratio of from 16 to 30 of Branch in Kasai, which is a container having an oxygen barrier, depending on the desired oxygen barrier and whiteness of the end product.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a talc having a CIE whiteness index of at least 40, which includes 45, an aspect ratio of at least 5 and an average aspect ratio of from 16 to 30 in Kasai in order to obtain a container which provides a good oxygen barrier and whiteness without the use of a pigment as taught by Branch.

Kasai also fails to disclose a further layer filled with 5 to 15% talc by weight. However, Kasai discloses a further layer filled with 25% talc by weight (column 4, lines 59 – 63) and teaches the selection of the amount of talc depending on the desired thermal resistance (column 3, lines 9 – 17). Therefore, one of ordinary skill in the art would have recognized the utility of varying the amount of talc to obtain the desired thermal resistance. Therefore, the thermal resistance would be readily determined by through routine optimization of the amount of talc by one having ordinary skill in the art depending on the desired use of the end product as taught by Kasai.

It therefore would be obvious for one of ordinary skill in the art to vary the amount of talc in order to obtain the desired thermal resistance, since the thermal resistance would be readily determined through routine optimization by one having ordinary skill in the art depending on the desired end result as shown by Kasai.

With regard to Claims 5, 12, 17 and 23, the further layer disclosed by Kasai is spaced from the inner, and therefore internal, surface of the laminated material by an additional layer of non – polar thermoplastic material filled by a platelet filler (blended polypropylene film ‘4’; column 4, lines 55 – 58; Figure 6).

With regard to Claim 16, the further layer disclosed by Kasai is adjacent the barrier layer and is adhered thereto by a tie layer (column 6, lines 6 – 8; Figure 2).

With regard to Claims 18 – 19, 30 – 31 and 33, the thickness of the further layer disclosed by Kasai is 50 microns (column 5, lines 13 – 19).

With regard to Claims 20 – 21, 37 and 39, Kasai discloses the blending of polypropylene with a polyethylenes or other polyolefins to obtain a layer that is heat sealable (column 6, lines 56 – 60) and therefore discloses a further layer comprising high density polyethylene and linear medium density polyethylene.

ANSWERS TO APPLICANT’S ARGUMENTS

4. Applicant’s arguments regarding the 35 U.S.C. 103(a) rejection of Claims 1, 5 – 6, 12, 15 – 21 and 23 – 40 as being unpatentable over Kasai (U.S. Patent No. 4,927,677) in view of Branch (U.K. Patent No. 2295617), of record in the previous Action, have been considered and have been found to be persuasive. The rejections are therefore withdrawn. The new 35 U.S.C. 103(a) rejection of Claims 1, 5 – 6, 12, 15 – 21 and 23 – 40 as being unpatentable over Kasai (U.S. Patent No. 4,927,677) in view of Branch (U.K. Patent No. 2295617) above is directed to amended Claims 1, 5 – 6, 12, 15 – 21 and 23 – 40.

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc A Patterson whose telephone number is 571-272-1497. The examiner can normally be reached on Mon - Fri 8:30 - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Marc A. Patterson

Marc A. Patterson, PhD.

Examiner

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[Signature]
HAROLD PYON
SUPERVISORY PATENT EXAMINER

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6/21/05